IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 15.06.2007

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

Crl.A.No.465 of 2001

M.N.Thangaraj ..Appellant/Complainant

vs.

1. Sri Venkatachalapathi Tex
   rep. By its Partner V.S.Gopal
2. V.S.Gopal
3. S.Kandasamy
4. T.Easwaran
5. V.Devaraj ..Respondents/Accused

This appeal has been preferred against the Judgment dated 5.12.2000, in C.C.No.41 of 1998 on the file of Judicial Magistrate No.1, Erode.

For Appellant : Mr.N.Manonkaran
For Respondents : Mr.B.Kumarasamy-R3

R1,R2,R4,R5 notice served
No appearance.

JUDGMENT

This appeal has been preferred against the judgment in C.C.No.41 of 1998 on the file of the Judicial Magistrate No.1, Erode. On a private complaint under Section 200 of Cr.P.C., the accused was charged under Section 138 r/w 142 of the Negotiable Instruments Act, 1881.(herein after referred to as "the Act").

2. After taking cognizance, the learned Judicial Magistrate has issued summons to the accused, on their appearance copies under Section 207 of Cr.P.C. were furnished to the accused and when offence was explained to them, they pleaded not guilty.

3. On the side of the complainant, P.Ws 1 to 3 were

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examined and Exs P1 to P10 were marked.

4. The complainant has examined himself as P.W.1. According to him, on 20.5.1997, the accused had borrowed Rs.1,00,000/- and had drawn a cheque dated 28.5.1997 in favour of him and that A4 had discounted the cheque Ex P1 in favour of him. According to him , all the accused have approached him with a request to present the cheque on 27.10.1997, after making corrections in the date in Ex P1 and when the cheque was presented on 29.10.97 for encashment, the same was dishonoured with an endorsement that the "account of drawer" was closed. Ex P2 is the cheque returned memo . Under the original of Ex P3, the complainant had issued notice dated 12.11.1997 to all the accused. Ex P4 is the returned cover from A2. The other accused have received the notice. Ex P5 to Ex P7 are the acknowledgments. A3 alone had replied under Ex P8,but he has not repaid the loan.

4a. P.W.2 is the Senior Manager in Dhanalakshmi Bank. According to him, Ex P1 cheque was presented in his bank on 29.10.1998 and that the same was forwarded to the Bank of Baroda, wherein the drawer of the cheque was having account but the said cheque was returned with an endorsement that the account has been closed. Ex P9 is the statement of account relating to the complainant's account.

4b. P.W.3 is the Manager of the Bank of Baroda, Erode Branch. According to him, Easwaran(A4) is having a current account No.3714 with his bank. Ex P1 cheque was forwarded to the Bank of Baroda, Erode Branch for collection through Dhanalakshmi Bank on 29.10.1998 but the said cheque was returned with an endorsement that the drawer of the cheque was not having sufficient fund in his account and as 29.10.1998, the drawer of the cheque was having only a sum of Rs.2899/90ps in the credit of his account. Ex P2 is the returned memo sent along with Ex P1 cheque. Ex P10 is the statement of account for the accused.

5. When the incriminating circumstances were put to the accused, they deny their complicity with the crime. D.Ws.1 to 5 were examined and Exs D1 to D4 were exhibited.

6. After scanning the evidence both oral and documentary, the learned Judicial Magistrate, Erode has come to a conclusion that the complainant has miserably failed to prove the guilt against the accused under Section 138 of the Act to warrant conviction and accordingly acquitted the accused from the charges levelled against them, which necessitated the complainant to prefer this appeal.

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7. Now the point for determination in this appeal is whether the appellant is entitled to any relief under Section 138 of the Act?

8. Heard Mr.N.Manonkaran,learned counsel for the appellant and Mr.B.Kumarasamy, learned counsel for third respondent and considered their rival submissions.

9.The Point:

It is the case of the complainant that Ex P1 impugned cheque was drawn by A2 Gopal as one of the Partners of the A1 Company in favour of Easwaran(A4). According to the complainant, A4 viz., Easwaran had discounted Ex P1 cheque in favour of A5 on 10.5.1997 who in turn had discounted Ex P1 cheque in favour of the complainant on 20.5.1997. But while deposing before the trial Court as P.W.1, the date of discount of Ex P1 by A4 and A5 was not spoken to by P.W.1. A perusal of Ex P1 cheque shows that A4 and A5 have only signed on the back of Ex P1 cheque and not even the date of discount was mentioned below their respective signatures. There is no documents produced on the side of the complainant to show that A5 Devaraj is also having account in his name in a bank .

10. To warrant conviction under Section 138 of the Act, a cheque is to be drawn by a person, who is having account maintained by him with a bank, should have drawn a cheque, which on presentation in the bank, should have been dishonoured on account of insufficient fund in the account of the drawer. From the facts narrated by P.W.1 in the complaint, we could infer that cheque ExP1 was drawn by A2 Gopal in favour of A4 Easwaran. So I am of the view that if at all, any one is having cause of action to resort to a remedy under Section 138 of the Act that is Easwaran (A5) alone in whose favour the impugned cheque Ex P1 was drawn by Gopal(A2).

11. The learned counsel appearing for the appellant relying on Sections 15 and 16 of the Act would contend that both Easwaran(A4) and Devaraj(A5) have made an endorsement on the back of EX P1 cheque which gives cause of action to the complainant to file this complaint against all the accused. At this juncture, the learned counsel appearing for the respondent would contend that in the cross examination of P.W.1, he has admitted that A3 is in no way connected with Ex P1 cheque. Under such circumstances, I am of the view that the appellant is not empowered under law to proceed against

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the accused under Section 138 of the Act.

12.The learned counsel appearing for the appellant relying on Sections 52 and 53 of the Act would contend that as per the endorsement in the back of Ex P1 cheque, the complainant can proceed against all the accused. This submission cannot be upheld because under Section 138 of the Act, only Easwaran (A4) alone can proceed against Gopal(A2) the drawer of the cheque in the absence of valid endorsement on the back of Ex P1 cheque. Even the date of endorsement is missing below the signatures of the endorsees.

13. Under such circumstances, I do not find any reason to interfere with the findings of the learned trial Judge in C.C.No.41 of 1998 on the file of the Judicial Magistrate No.1, Erode. The point is answered accordingly.

14. In the result, the appeal is dismissed confirming the Judgment in C.C.No.41 of 1998 on the file of Judicial Magistrate No.1, Erode.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

sg

To

1.The Judicial Magistrate-No1,Erode
2. -do- the Chief Judicial Magistrate, Erode.

+1cc to Mr.N.Manokaran, Advocate Sr 35242

NTK (CO)
km/22.6.

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